

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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KARESSA BATTENFELD; A.D., a minor by
and through her guardian ad litem KARESSA
BATTENFELD; BRENDA DONAHUE; and
A.Q., a minor by and through her guardian ad
litem BRENDA DONAHUE,

Plaintiffs,

v.

WASHOE COUNTY SCHOOL DISTRICT,
DEBBIE STEBBINS, and MATHEW BURAK,

Defendants.

Case No. 3:15-cv-0557-LRH-WGC

ORDER

Before the court is plaintiffs Karessa Battenfeld (“Battenfeld”) and A.D.’s, a minor, motion for order confirming settlement. ECF No. 30. Defendants the Washoe County School District (“WCSD”), Debbie Stebbins (“Stebbins”), and Mathew Burak (“Burak”) (collectively “defendants”) filed a non-opposition to the motion. ECF No. 32.

I. Facts and Procedural Background

Plaintiff A.D. is a former student of defendant Stebbins at Marvin Picollo Elementary School within WCSD. A.D. is a special needs student and was assigned to Stebbins’ special needs classroom for the 2013-2014 school year. During that school year A.D. was allegedly abused by Stebbins on several occasions.

On November 18, 2015, plaintiffs filed the underlying complaint against defendants alleging seven causes of action: (1) excessive force in violation of 42 U.S.C. § 1983;

1 (2) discrimination in violation of the Americans with Disabilities Act (“ADA”); (3) violation of
2 § 504 of the Rehabilitation Act of 1973; (4) battery; (5) intentional infliction of emotional
3 distress; (6) negligence; and (7) negligent supervision. ECF No. 1. After the action was filed, the
4 parties agreed to settle plaintiffs’ claims for \$800,000.00. Thereafter, plaintiffs filed the present
5 motion to confirm settlement. ECF No. 30.

6 **II. Discussion**

7 “District courts have a special duty, derived from Federal Rule of Civil Procedure 17(c),
8 to safeguard the interests of litigants who are minors.” *Robidoux v. Rosengren*, 638 F.3d 1177,
9 1181 (9th Cir. 2011). “Rule 17(c) provides, in relevant part, that a district court ‘must appoint a
10 guardian ad litem — or issue another appropriate order — to protect a minor or incompetent
11 person who is unrepresented in an action.’” *Id.* (quoting FED. R. CIV. P. 17(c)). “In the context of
12 proposed settlements in suits involving minor plaintiffs, this special duty requires a district court
13 to ‘conduct its own inquiry to determine whether the settlement serves the best interests of the
14 minor.’” *Id.* (quoting *Dacanay v. Mendoza*, 573 F.2d 1075, 1080 (9th Cir. 1978)).

15 As the Ninth Circuit has recently made clear, in cases involving the settlement of a
16 minor’s claims, district courts should “limit the scope of their review to the question whether the
17 net amount distributed to each minor plaintiff in the settlement is fair and reasonable, in light of
18 the facts of the case, the minor’s specific claim, and recovery in similar cases,” and should
19 “evaluate the fairness of each minor plaintiff’s net recovery without regard to the proportion of
20 the total settlement value designated for adult co-plaintiffs or plaintiffs’ counsel — whose
21 interests the district court has no special duty to safeguard.” *Id.* at 1181-82 (citing *Dacanay*, 573
22 F.2d at 1078).

23 Here, A.D., through her guardian ad litem, has agreed to settle her claims against
24 defendants. According to the express terms of the settlement, defendants shall pay plaintiffs
25 \$800,000.00 in exchange for a release of all claims. Plaintiffs’ counsel are set to receive 1/3 of
26 the total settlement as a contingent fee, calculated before the deduction of expenses, for a total
27 fees award of \$213,333.33. After the deduction of fees and costs, the parties have agreed to
28 allocate \$417,852.63 from the remaining net proceeds to A.D., through the creation of a special

1 needs trust. This amount constitutes 80% of the total net settlement, with the remaining 20% of
2 net proceeds going to Battenfeld for her own personal claims against defendants. A copy of the
3 proposed special needs trust is attached as an exhibit to the motion. ECF No. 30, Exhibit A. The
4 trust has been specifically drafted by Attorney John C. Smith, an estate planning attorney who
5 specializes in developing estate plans that involve persons with disabilities. *Id.*

6 Upon consideration of the facts of the case, A.D.'s specific claims, the terms of the
7 settlement, and recoveries in similar cases, the court finds the settlement to be in the best interest
8 of all of the parties, and specifically A.D., and that the amount of money A.D. will receive
9 (\$417,852.63) for her claims is fair and reasonable. Accordingly, the court shall grant plaintiffs'
10 motion as follows:

- 11 (1) The underlying settlement between plaintiffs and defendants in the amount of
12 \$800,000.00 is APPROVED;
- 13 (2) The creation and funding of the special needs trust attached as Exhibit A to plaintiffs'
14 motion is APPROVED;
- 15 (3) Plaintiff Battenfeld, as guardian ad litem, shall execute the special needs trust for
16 A.D. pursuant to the terms of that trust;
- 17 (4) On-going oversight of the special needs trust established herein shall lie with the
18 Second Judicial District Court for the State of Nevada;
- 19 (5) \$417,852.63 in net proceeds for the settlement shall be allocated to and held within
20 the special needs trust established for plaintiff A.D.;
- 21 (6) Any trustee bond for the special needs trust shall be waived until such time as trust
22 funds are released and made accessible to the Trustee; and
- 23 (7) Attorneys' fees in the amount of \$1,500.00 shall be paid from the special needs trust
24 to Attorney John C. Smith of the John Smith Law Firm for preparation of the special
25 needs trust.

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1 IT IS THEREFORE ORDERED that plaintiffs' motion to confirm settlement
2 (ECF No. 30) is GRANTED in accordance with this order.

3 IT IS SO ORDERED.

4 DATED this 4th day of October, 2016.

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6 LARRY R. HICKS
7 UNITED STATES DISTRICT JUDGE
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